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07 UNITED STATES DISTRICT COURT
08 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

09 WILLIE J. MAYES,

10 Petitioner,

Case No. C13-1452-MJP-MAT

11 v.

REPORT AND RECOMMENDATION

12 MIKE OBENLAND,

13 Respondent.

14
15 INTRODUCTION AND SUMMARY CONCLUSION

16 Petitioner Willie Mayes is a Washington prisoner who is currently confined at the
17 Clallam Bay Corrections Center in Clallam Bay, Washington. Petitioner has submitted to this
18 Court for review a petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging his
19 2009 King County Superior Court judgment and sentence. Respondent has filed an answer to
20 the petition together with relevant portions of the state court record. This Court, having
21 reviewed the petition, respondent's answer, and the balance of the record, concludes that
22 petitioner's federal habeas petition is untimely and should therefore be dismissed.

01 PROCEDURAL HISTORY

02 On July 24, 2009, petitioner was found guilty, following a jury trial, of violating the
03 Uniform Controlled Substances Act by delivering cocaine. (Dkt. 11, Ex. 1 at 1.) On
04 December 18, 2009, petitioner was sentenced to term of 75 months confinement. (*See id.*, Ex.
05 1 at 4.) Petitioner appealed his conviction to the Washington Court of Appeals and, on March
06 14, 2011, the Court of Appeals issued an unpublished opinion affirming the conviction. (*See*
07 *id.*, Ex. 2.) Petitioner did not seek review by the Washington Supreme Court and, on May 6,
08 2011, the Court of Appeals issued its mandate terminating direct review. (*See* Dkt. 7,
09 Appendix B.)

10 On March 13, 2012, petitioner filed a personal restraint petition in the Washington
11 Court of Appeals. (Dkt. 11, Ex. 3.) The Court of Appeals issued an order dismissing the
12 petition on November 9, 2012. (*Id.*, Ex. 6.) Petitioner thereafter filed a motion for
13 discretionary review in the Washington Supreme Court and that motion was denied on April 26,
14 2013. (*Id.*, Dkts. 7 and 8.) The Court of Appeals issued a certificate of finality in petitioner's
15 personal restraint proceedings on June 28, 2013. (*Id.*, Ex. 9.)

16 Petitioner now seeks federal habeas review of his conviction. Petitioner signed his
17 federal habeas petition on August 11, 2013, and the petition was received for filing on August
18 14, 2013. (*See* Dkt. 1.)

19 DISCUSSION

20 Respondent argues in his answer to petitioner's petition that the petition is untimely
21 under the federal statute of limitations, 28 U.S.C. § 2244(d). Pursuant to §2244(d)(1), a one
22 year period of limitation applies to an application for a writ of habeas corpus filed a by a person

01 in custody pursuant to the judgment of a state court. The one year limitation period generally
02 begins to run from the date of the conclusion of direct review or “the expiration of the time for
03 seeking such [direct] review,” whichever is longer. 28 U.S.C. § 2244(d)(1)(A).

04 In this case, the period for direct review ended, at the latest, upon the expiration of the
05 period for seeking review by the Washington Supreme Court of the Washington Court of
06 Appeals’ decision affirming petitioner’s conviction. *See Wixom v. Washington*, 264 F.3d 894
07 (9th Cir. 2001). The Court of Appeals issued its opinion affirming petitioner’s judgment and
08 sentence on March 14, 2011. (*See* Dkt. No. 1, Ex. 2.) Petitioner had 30 days from that date to
09 file a petition for review. *See* Rule 13.4(a), Washington Rules of Appellate Procedure.
10 Because petitioner did not file a petition for review, his conviction became final on or about
11 April 13, 2011. 28 U.S.C. § 2244(d)(1)(A). Petitioner’s one year statute of limitations began
12 to run on the following day. *See Corjasso v. Ayers*, 278 F.3d 874, 877 (9th Cir. 2002).

13 The one year limitations period is tolled for any “properly filed” collateral state
14 challenge to the state conviction. 28 U.S.C. § 2244(d)(2). Thus, the statute of limitations was
15 tolled from March 13, 2012, the date petitioner filed his personal restraint petition, until April
16 26, 2013, the date petitioner’s motion for discretionary review was denied by the Washington
17 Supreme Court. Between April 14, 2011, the date the statute of limitations began to run, and
18 March 13, 2012, 334 days ran on the statute of limitations. The statute of limitations began to
19 run again on April 27, 2013, the day after petitioner’s motion for discretionary review was
20 denied by the Supreme Court, and expired 31 days later, on or about May 28, 2013.

21 The statute of limitations governing federal habeas petitions is also subject to equitable
22 tolling. *Holland v. Florida*, 560 U.S. 631 (2010). However, the Ninth Circuit has made clear

01 that equitable tolling is available “only when extraordinary circumstances beyond a prisoner’s
02 control make it impossible to file a petition on time and the extraordinary circumstances were
03 the cause of his untimeliness.” *Laws v. Lamarque*, 351 F.3d 919, 922 (9th Cir. 2003) (internal
04 quotation and citation omitted). Petitioner makes no showing that he is entitled to equitable
05 tolling of the federal statute of limitations.

06 As noted above, petitioner signed his federal habeas petition on August 11, 2013, over
07 two months after the statute of limitations expired on May 28, 2013. Because petitioner filed
08 his petition outside of the § 2254 statute of limitations period, and because petitioner has not
09 demonstrated that he is entitled to equitable tolling of the limitations period, his petition is
10 time-barred.

11 Certificate of Appealability

12 A petitioner seeking post-conviction relief under § 2254 may appeal a district court’s
13 dismissal of his federal habeas petition only after obtaining a certificate of appealability (COA)
14 from a district or circuit judge. A certificate of appealability may issue only where a petitioner
15 has made “a substantial showing of the denial of a constitutional right.” See 28 U.S.C. §
16 2253(c)(3). A petitioner satisfies this standard “by demonstrating that jurists of reason could
17 disagree with the district court’s resolution of his constitutional claims or that jurists could
18 conclude the issues presented are adequate to deserve encouragement to proceed further.”
19 *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under this standard, this Court concludes that
20 petitioner is not entitled to a certificate of appealability in this matter.

21 CONCLUSION

22 For the reasons set forth above, this Court recommends that petitioner’s federal habeas

01 petition, and this action, be dismissed with prejudice pursuant to 28 U.S.C. § 2244(d). This
02 Court further recommends that a certificate of appealability be denied. A proposed order
03 accompanies this Report and Recommendation.

04 DATED this 20th day of November, 2013.

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07 Mary Alice Theiler
08 Chief United States Magistrate Judge
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